



02-15-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

**TRADEMARK**

JAS01 T-100

Express Mail #EV054959820US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Law Office : 107  
Examining Attorney : Michael P. Keating  
Applicant : Benita Jasper  
Serial No. : 76/077,380  
Filing Date : June 26, 2000  
Mark : ETHNIC BRIDE  
International Class No. : 16

Box TTAB Fee  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

Dear Sir:

APPEAL TO THE TRADEMARK TRIAL AND APPEAL BOARD

Applicant hereby appeals to the Trademark Trial and Appeal Board from the decision of the Examiner dated August 22, 2001, finally refusing registration of the above-identified trademark.

The appeal fee required in Rule 2.6(a)(18) in the amount of \$100 is enclosed. If any additional fees are due, please charge Account No. 22-0190. A duplicate copy of this sheet is attached.

Respectfully submitted,

BENITA JASPER

By: Van Dyke, Gardner, Linn & Burkhart, LLP

Frederick S. Burkhart  
2851 Charlevoix Drive, S.E., Suite 207  
Post Office Box 888695  
Grand Rapids, Michigan 49588-8695  
(616) 975-5500

Dated: February 15, 2002.

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TELE MARK LAW OFFICE 107  
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\*\*Please Place on Upper Right Corner\*\*  
\*\*of Response to Office Action ONLY \*\*

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BOX TTAB

FEE

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

Dear Sir:

REQUEST FOR RECONSIDERATION IN RESPONSE TO FINAL OFFICE ACTION  
UNDER 37 C.F.R. § 2.64(b)

Receipt of the final Office Action mailed August 22, 2001, with a period of response ending February 22, 2002, in connection with the above-identified trademark application is respectfully acknowledged.

In the final Office Action, the Trademark Examining Attorney maintains the position that Applicant's mark ETHNIC BRIDE is merely descriptive in that it merely describes the subject matter and audience of the publication for which Applicant seeks registration and the primary audience of the publication. Applicant has thoroughly reviewed the Office Action and the information cited therein and requests reconsideration of the refusal to register. Applicant is concurrently filing a Notice of Appeal with the Trademark Trial and Appeal Board to appeal the Examining Attorney's refusal to register Applicant's mark.

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Applicant : Benita Jasper  
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As recognized by the Examining Attorney whether a mark is merely descriptive under the statute must be considered in relationship to the identified goods, not in the abstract. However, in applying the statute, the decided cases state that if a trademark does not clearly tell the potential customer or consumer only what the goods are, the mark is not "merely descriptive." *In re Colonial Stores, Inc.*, 157 USPQ 382, 385 (CCPA 1968). Further, the word "merely" also means that, if a composite is not totally descriptive in all its terms, the mark, as a whole, is not "merely" descriptive. See *McCarthy on Trademarks and Unfair Competition*, J. Thomas McCarthy, Third Edition, Volume 1, Section 11.18 (1), pages 11-90.

In the present case, the Examining Attorney takes the position that ETHNIC BRIDE is used to describe the primary audience of the publication as it immediately names the individual to whom the information is directed, i.e., brides who are planning an ethnic wedding or who are interested in varying wedding customs. The Examining Attorney has attached numerous pages of printouts from the NEXIS computerized database showing various uses of the terms ETHNIC and BRIDE and alleges that at least some of these demonstrate the descriptive use of ETHNIC BRIDE to describe a publication, namely, a magazine in the field of information regarding brides and weddings. However, when viewed against Applicant's description of goods, it is clear that neither of the terms ETHNIC nor BRIDE describe Applicant's particular goods. Indeed, it is quite clear from the attached NEXIS articles that the combined term ETHNIC BRIDE, as used as a trademark by Applicant, does not only tell what Applicant's goods are, or their functions, characteristics, uses, or ingredients, nor does the combined term convey an immediate idea of Applicant's goods or their ingredients, qualities, or characteristics, especially with a "degree of particularity" as required under a proper interpretation of the statute. Rather, Applicant's mark, at most, suggests that Applicant's publication is different from other publications, but clearly does not apply to any individual or group.

Even if, for the purposes of argument, the individual terms from which the present mark ETHNIC BRIDE is formed are viewed as being descriptive of the present

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publication, which is not admitted, in any way, it is well established that a combination of two or more descriptive elements as a composite mark may result in the composite which is non-descriptive. See *In re Warner Electric Brake & Clutch Co.*, USPQ 328 (TTAB 1967), and *Firestone Tire & Rubber Co. v. The Good Year Tire & Rubber Co.*, 186 USPQ 557 (TTAB 1975), *Aff'd*, 189 USPQ 348 (CCPA 1976). In other words, the commercial impression of a composite mark may be arbitrary or suggestive even though its separate parts are descriptive. Here, ETHNIC BRIDE is a non-descriptive, composite mark. Moreover, even if one portion of the mark is considered descriptive, it is also well established that, if a composite mark is not 100 percent descriptive, the mark, as a whole, is not "merely descriptive." See *In re Richardson & Co.*, 185 USPQ 46 (CCPA 1975). In addition, the submitted exerted articles from the NEXIS research database showing the use of ETHNIC or BRIDE or ETHNIC BRIDE fail to show that the term is used to describe Applicant's goods with a degree of particularity while providing an immediate idea of such goods that is required under the law. It is respectfully submitted that the combined term ETHNIC BRIDE is a non-descriptive composite which provides a commercial impression which is arbitrary or, at most, suggestive of a desired or end result of the use of the goods, but is not recognized as a term of art for Applicant's goods. Applicant's mark is even more registerable than the mark was in *In re Warner Electric Brake & Clutch Co.*, *supra*, wherein ELECTRO-MODULE was held not to be descriptive of electro-magnetic brakes even though it was recognized that the words ELECTRO and MODULE taken separately have been frequently used in connection with friction clutches and brakes and similar goods.

Accordingly, in view of the established law, and the lack of any evidence showing ETHNIC BRIDE as a recognized term of art only describing particular goods with which Applicant identifies the mark in this application, it is respectfully submitted that ETHNIC BRIDE is not "merely descriptive" of the goods and is registerable on the Principal Register.

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Reconsideration of the prior refusal to register is earnestly requested.

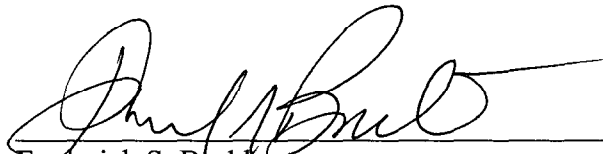
A Notice of Allowance is earnestly solicited.

Respectfully submitted,

BENITA JASPER

By: Van Dyke, Gardner, Linn  
& Burkhart, LLP

Dated: February 15, 2002.



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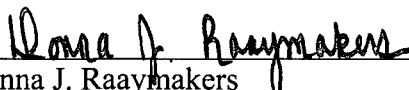
Dear Sir:

CERTIFICATE OF MAILING BY EXPRESS MAIL

I certify that the attached return postcard, check in the amount of \$100 (Ex Parte Appeal Fee) and APPEAL TO THE TRADEMARK TRIAL AND APPEAL BOARD (1 page, in duplicate); and REQUEST FOR RECONSIDERATION IN RESPONSE TO FINAL OFFICE ACTION UNDER 37 C.F.R. § 2.64(b) (4 pages) are being deposited with the United States Postal Service as Express Mail in an envelope having Express Mail Label Number EV054959820US addressed to :

Box TTAB Fee  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

on February 15, 2002.

  
Donna J. Raaymakers  
Van Dyke, Gardner, Linn & Burkhardt, LLP  
2851 Charlevoix Drive, S.E.  
Post Office Box 888695  
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(616) 975-5500

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Enclosures



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